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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,895	07/24/2001	GERALD ANTON OFNER	046-7001.30	3043

466 7590 07/15/2003

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[REDACTED] EXAMINER

FINEMAN, LEE A

ART UNIT	PAPER NUMBER
	2872

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No .	Applicant(s)
	09/889,895	OFNER, GERALD ANTON
Examiner	Art Unit	
Lee Fineman	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 30 April 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,2,4 and 6-61 is/are pending in the application.
- 4a) Of the above claim(s) 6-61 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 30 April 2003 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

This Office Action is in response to an amendment filed 30 April 2003 in paper number 12 in which claims 1, 4 and 53 were amended and claims 3 and 5 were cancelled. Claims 1-2, 4 and 6-61 are pending.

### ***Election/Restrictions***

1. Claims 6-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Claim 1 was indicated as generic in the original restriction. However, since claim 1 has been amended to include the subject matter of claim 5, claim 1 is no longer generic and is now directed to elected species I.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Austria on 30 November 1999. It is noted, however, that applicant has not filed a certified copy of the A 2016/99 application as required by 35 U.S.C. 119(b).

Receipt is acknowledged of Austria application A1994/99, filed 24 November 1999, submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 30 April 2003 have been approved.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haaksman, U.S. Patent No. 5,374,820 in view of Austrian Patent Publication No. AT 000307 U1 (henceforth AT-307) and Eastcott, U.S. Patent No. 5,592,331.

Haaksman discloses a vision aid (fig. 5 and fig. 7) in the form of telescopic spectacles with two lens systems (10 and 10') which each comprise optical elements comprising at least one objective lens (11) and one eyepiece (12), an autofocus means (400) which changes the focal length to adjust the lens systems according to the distance of the telescopic spectacle from the object (column 8, lines 28-39), a means for matching the parallax (101, 111, 121 with 130, fig.6a) between the lens systems of the vision aid to the focal length which has been set according to the distance of the telescopic spectacles from an object (V1, V2), wherein the optical elements are adjustable (11) in that they move across the beam path (17, 17') and are provided in the beam path of the vision aid for changing an angle (not numbered, but clearly changed between V1 and V2 in fig. 5) between the beam paths (17, 17') which run out of the lens systems towards the object. Upon further review of Haaksman, lens systems (10, 10') may be considered to tilt or move transversely along curved paths (dashed line in fig. 5) when these terms are given their broadest reasonable interpretation. However, Eastcott clearly shows an

optical adapter (figs. 3a and 3b) wherein the optical elements can be moved along curved paths (along curved sleeve 11) and wherein the optical elements (5) are arranged to be able to tilt (column 6, lines 13-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the optical adapter of Eastcott into each lens system of Haaksman to render objects positioned at the same distance from the lens plane with different degrees of sharpness (column 3, lines 55-57, Eastcott) thereby being able to accurately point out only one object. Further, Haaksman discloses the claimed invention except for a means for changing the magnification factor of the lens systems. AT-307 teaches telescopic spectacles with two lens systems (fig. 1) with a means for changing the magnification factor of the lens systems (13, 14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the means for changing the magnification factor of AT-307 to the system of Haaksman to provide the viewer with more flexibility in viewing the image with a broader range of magnifications.

***Response to Arguments***

6. Applicant's arguments filed 30 April 2003 have been fully considered but they are not persuasive.

Applicant argues that Haaksman teaches a different angle for different objects and a constant angle for a single object. The examiner respectfully disagrees. While the positions of an object are labeled as V1 and V2, the same object can be in either position and therefore an angle is changed between the beam paths (17, 17') that run out of the lens systems towards the object. In fact, fig. 4 details a change in angle with respect to distance (Vg) as an object is moved a

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different distance from the eye. Therefore, Haaksman discloses a different angle (wherein the optical elements are adjusted, fig. 5) as the object moves a different distance from the eye.

Applicant further argues that Eastcott teaches a monocular lens system that is used to control the plane along which the depth of field is defined and therefore teaches no reasonable expectation that the tiltable mechanism would function in a binocular system. The examiner respectfully disagrees. Each lens system of a binocular system is essentially a monocular system in which the tiltable mechanism would function to sharpen the view. Therefore, there is a reasonable expectation the tiltable mechanism of Eastcott would function in a binocular system.

Additionally, upon further review of Haaksman, the structure of the optical elements (11) are themselves arranged to be tiltable as the elements inclination changes as they move transversely to the beam path along a curved path (dashed line, fig. 5).

7. It is noted by the Examiner that the specification, drawing and claim objections as well as the 112 rejections made in the previous Office Action have been withdrawn due to amendment by the Applicant.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

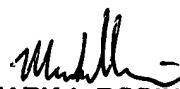
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Fineman whose telephone number is (703) 305-5414. The examiner can normally be reached on Monday - Friday 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (703) 305-0024. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4900.

Laf

LAF  
July 10, 2003

  
MARK A. ROBINSON  
PRIMARY EXAMINER